

S.B. Criminal Misc. Petition NO.470/2006
(Kana Ram Vs. State & Ors.)

Date of order : 14.5.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. V.D. Kalla with
Mr. Amitabh Acharya, for the petitioner.
Mr. Ashok Upadhyay, Public Prosecutor.
Mr. J.K. Chanda, for non-petitioner No.2.

Heard learned counsel for the parties and perused the impugned order as well as the record of the case.

By way of filing the present misc. petition, the petitioner has challenged the order impugned dated 2.3.2006 passed by Additional District & Sessions Judge No.2, Jodhpur confirming the order dated 23.01.2006 passed by Judicial Magistrate, Jodhpur whereby cognizance was taken against the petitioner for offence under Sections 420, 467, 468 and 471 I.P.C.

According to the provisions of Code of Criminal Procedure, the opportunity is available to the petitioner to raise all grounds before the trial court for his discharge under Section 239 Cr.P.C. and the Magistrate is under an obligation to provide an opportunity of hearing to the petitioner and consider the arguments and objections advanced/raised by the

accused at that time. Thus, at this stage, it is not proper to interfere with the order impugned, taking cognizance against the petitioner.

In this view of the matter, the misc. petition is dismissed with the observation that the learned trial court may consider all the material on record as well as the arguments and objections advanced/raised by both the parties at the stage of Section 239 Cr.P.C. in accordance with the law.

(GOPAL KRISHAN VYAS), J .

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